

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
1998 Biennial Regulatory Review –)
Petition for Section 11 Biennial Review) CC Docket No. 98-177
filed by SBC Communications, Inc.,)
Southwestern Bell Telephone Company,)
Pacific Bell, and Nevada Bell)

REPLY OF U S WEST COMMUNICATIONS, INC.

U S WEST Communications, Inc. ("U S WEST") herein submits its Reply in response to comments in the above-captioned proceeding.¹ In its Initial Comments to the United States Telephone Association's Petition for Rulemaking,² U S WEST submitted that "the Federal Communications Commission ("Commission") has both the ability and the mandate to eliminate all regulations which are not demonstrably necessary." The normal legal principle that a regulation currently on the books has a presumption of lawfulness has been reversed by statute, and what is commonly known as the "Motor Vehicles test" has been eliminated for

¹ In the Matter of 1998 Biennial Regulatory Review - Petition for Section 11 Biennial Review filed by SBC Communications, Inc., Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell, CC Docket No. 98-177, Notice of Proposed Rulemaking, FCC 98-238, rel. Nov. 24, 1998 ("NPRM").

² Petition for Rulemaking of the United States Telephone Association, ASD 98-97, filed Sep. 30, 1998. Initial Comments of U S WEST Communications, Inc., filed Nov. 30, 1998 ("U S WEST Initial Comments") (incorporated herein by reference).

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Commission legacy regulations.³

U S WEST supports the SBC Petition in concept and principle. It has now been three years since the Congress passed a statute which was meant to provide significant and substantial relief from unnecessary and burdensome regulation, and little has happened on the deregulation front. If anything, incumbent local exchange carriers are now subject to more micro-regulation than was the case before the Act was passed. Several points made by commentators deserve mention.

First, several parties contend that Section 11 of the Act does not give the Commission the power to waive statutory duties, and that only the Commission's rules are implicated by this section.⁴ CompTel claims that any waiver of a statutory section must be under the authority of Section 10 of the Act.⁵ Thus, CompTel contends that the statutory waivers asked for by SBC in the area of detariffing of high capacity services subject to competition cannot be dealt with in the context of the instant proceeding.⁶

As a straightforward matter of statutory interpretation, these commentators would appear to be right -- Section 11 of the Act by its terms does not appear to provide the Commission with independent waiver power for statutory requirements. However, Section 10, which not only gives the Commission the authority to waive statutory sections but commands that it exercise such power in specified cases, is

³ U S WEST Initial Comments at 2, citing to Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29 (1983).

⁴ See, e.g., Hyperion at 2-3.

⁵ CompTel at 2-3.

clearly applicable to proceedings such as the instant one. While Section 10(c) of the Act outlines how a regulated telecommunications carrier's petition for Section 10(c) forbearance must be styled and processed, it does not limit Section 10's applicability to regulations which are subject to a Section 10(c) petition. To the contrary, Section 10 mandates the Commission to waive unnecessary statutory requirements whenever the Section 10 test has been met, no matter what the procedural context.

Second, it has been properly noted by CompTel and GST that U S WEST has itself sought forbearance from tariffing for its own high capacity services in the cities of Phoenix and Seattle, as if these U S WEST filings somehow detract from the power of the SBC filing.⁷ U S WEST has indeed made such filings, and fully expects that they will be granted in the near future. However, U S WEST serves literally thousands of communities in its territory, which covers nearly a 25 percent of the continental United States. U S WEST envisions that in the near future it will seek further deregulation on a more generic basis. The Phoenix and Seattle filings are compelling, but processing several thousand more would most likely not be the most efficient use of the Commission's resources. A filing such as SBC has made may well prove to be the best vehicle for efficient deregulation in the future, including deregulation which is based on Section 10 statutory considerations, and the existence of the U S WEST city-specific petitions should not be used as an argument against the pendant SBC Petition.

⁶ Id. at 5.

⁷ CompTel at 2; GST at 3.

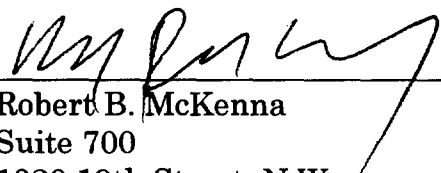
Third, MCI has suggested the use of what it calls two "Simplifying Cover Forms" for petitions seeking deregulation.⁸ As a general principle, MCI's idea seems to be a good one, especially if actual grants can be expedited through use of such forms. U S WEST would be glad to work with MCI and others in fine tuning MCI's proposed form into a more viable document.⁹

In sum, the SBC Petition represents a sound approach to deregulation, and makes a number of excellent suggestions for beginning the crucial work of eliminating the burdens of unnecessary regulation which plague the telecommunications industry today. U S WEST recommends that a sympathetic hearing be given to the SBC Petition.

Respectfully submitted,

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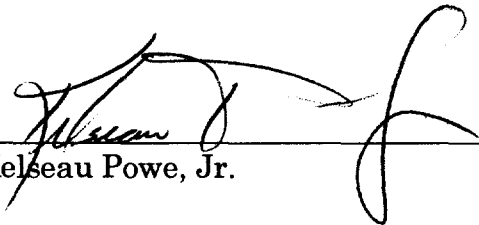
January 25, 1999

⁸ MCI at 2-3.

⁹ For example, MCI's suggestion that a petition for regulatory relief include an estimate of the financial impact if the petition is not granted seems misplaced in light of the statutory imperative that the Commission eliminate all unnecessary regulation.

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 25th day of January, 1999,
I have caused a copy of the foregoing **REPLY OF U S WEST**
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